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Research Report

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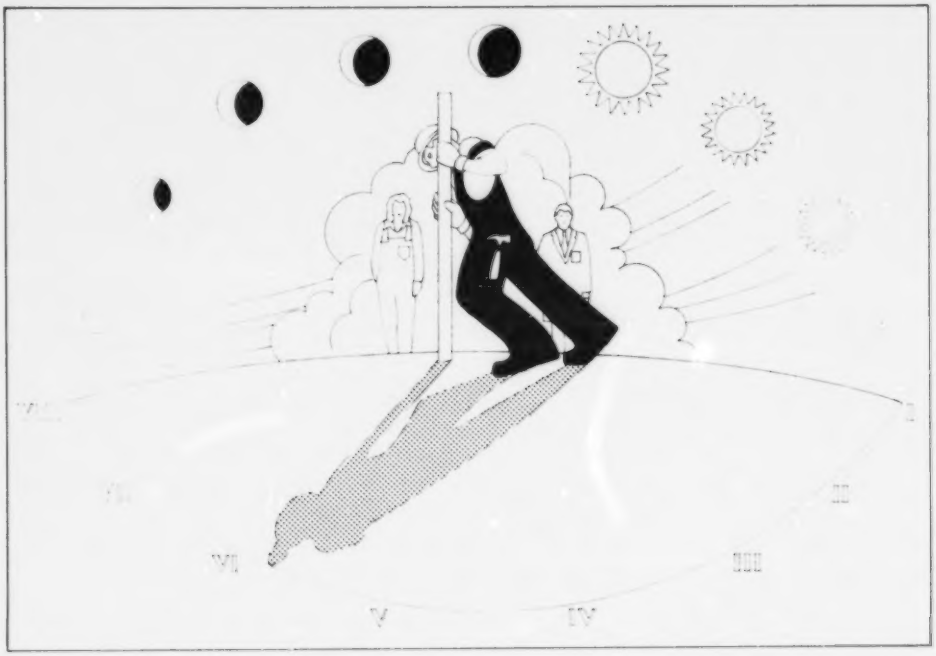

Hours of Work and Overtime: U.S. Experience and Policies

HOURS OF WORK AND OVERTIME:

U.S. EXPERIENCE AND POLICIES

by

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(A Report Prepared for the Ontario Task Force on Hours of Work and Overtime)

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The views expressed in this report are those of the author and need not reflect the position of the Ontario Task Force on Hours of Work and Overtime.

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Abstract: Hours of Work and Overtime: U.S. Experience and Policies

The United States, a major, proximate trading partner of Ontario, has gone through a recent public debate over the pros and cons of restricting overtime to create jobs. As well, the United States offers a multiplicity of experiences with legislation restricting the use of overtime. Although some of the lessons to be learned from U.S. experience cannot be directly transferred to the Ontario setting, they provide insight into the feasibility of certain policy options. This study, in examining the U.S. situation, looks at the Fair Labor Standards Act, reviews hearings on proposals to amend that Act, examines states' laws, and presents a discussion of policy alternatives.

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HOURS OF WORK AND OVERTIME:

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INTRODUCTION: HOURS OF WORK

The 10-hour workweek has been the general standard in most industries in the United States for at least the past two decades. The convention established by the federal government's Fair Labor Standards Act (FLSA) for the payment of an overtime pay premium for all hours worked in excess of 40 in a week may have been a significant factor in the wide-scale acceptance of the 40-hour workweek as the norm for full-time employees. The 40-hour standard has become the common cutoff point in collective bargaining agreements that require the payment of premium pay for overtime hours.

Dr. Marvin Kosters, a former director of the American Enterprise Institute Center for the Study of Government Regulation, has noted that not all workers, however, are content with the 40-hour workweek. He has pointed out that

> Survey results seem to indicate an interest in flexibility for departure from the norm, flexibility for choices by workers, and, in general, opportunities to work out arrangements that would permit more heterogeneity and variety in working hours in the economy. (U.S. Congress 1979, p.229).

Yet there has not been a detectable trend in the standard workweek for the past two decades. It is conceivable that the combination of

employers' desire for longer hours, employees' desire for shorter hours, and the overtime premium pay rules in the FLSA and comparable legislation in 31 of the states have served to maintain a compromise on the 40-hour workweek.

Among the reasons that have been cited in support of the position that employers are likely to have increased their demand for longer hours are the following:

- Firms now make more extensive investments in hiring, screening, and training new employees, and thus firms have a desire to work them longer work hours in order to recover the costs of the investments. (U.S. Congress 1979, p.217).
- Reductions from the present 8-hour workday and the 40-hour workweek will not lead to any productivity gains associated with reductions in fatigue (p.218).
- The growth of supplementary benefits (e.g., health insurance, public holiday and vacation pay) which require fixed costs per employee and are independent of hours worked has increased firms' demand for longer weekly hours (p.229).
- Social security and unemployment benefits legislation have imposed costs on employers that do not bear a direct relation to hours worked per week, and so their effects are quite similar to those of the above-noted supplementary benefits (p.194).

As for workers, higher real wages generally lead to an increased demand for leisure and hence a desire to work fewer hours.

Yet, despite these conflicting desires, the 40-hour workweek has prevailed.

But not all employees work 40 hours a week. According to a special Current Population Survey for May 1980 approximately 16.6 million workers in the United States (23.1 per cent of all full-time workers) worked more than 40 hours a week on their sole or primary job. The gender breakdown was 12.7 million men (28.8 per cent of all full-time male workers), and 3.9 million women (14.1 per cent of all full-time female workers). Of those who worked more than 40 hours, 40 per cent of the men and 42 per cent of the women receiving premium pay for hours worked in excess of 40 per week. Despite the scope of the coverage of the federal FLSA and the various state clones of this Act, a large proportion of the people working more than 40 hours a week did not receive any overtime pay premium (see Taylor and Sekscenski 1982).

Nevertheless, there are some signs that the FLSA's premium pay requirements may have had a deterrent effect on the use of overtime. Taylor and Sekscenski (p.48) have argued:

> "Between May 1973 and May 1980, the proportion of full-time wage and salary workers who reported long workweeks on a single job turned down slightly. Amendments to the Fair Labor Standards Act during the 1970s, which brought additional workers under its overtime provisions...played an important role in the trend."

Furthermore, union workers are less likely to work more than 40 hours a week than are nonunion workers (according to the survey results); but 68 per cent of the workers covered by a union contract received

overtime pay premiums compared with only 33 per cent of the nonunion employees who worked beyond 40 hours a week. These differentials, Taylor and Sekscenski (p.49) suggest, can be explained "by organized labour's ability to gain overtime premium provisions in collective bargaining agreements and the greater likelihood that union members [are] covered by the FLSA." Consequently, union workers are less likely to be asked to work overtime because of the deterrent effects of the overtime premium.

Further support, albeit somewhat weak, is provided by the differing overtime experiences of occupational groups. Table 1 shows that, with the exception of two anomalies (craft and kindred workers and transport equipment operatives), the occupational groups which had higher proportions working more than 40 hours a week also had smaller proportions receiving premium pay for overtime hours. The "relatively" high proportion of craft workers who worked more than 40 hours weekly may reflect a shortage in their supply since craft workers are highly skilled.

The impact of the FLSA on the payment of overtime premium pay is quite pronounced in the survey results by industry. Fifty-six per cent of workers in the goods-producing industries received premium pay for hours in excess of 40, whereas only 31 per cent of employees in the service producing industries received such premium pay. Leonard (1983, p.81) has remarked:

Table 1
U.S. Full-Time Wage and Salary Workers Who worked 41 Hours or More a Week on a Single Job and Those Who Received Premium Pay, by Occupational Group, May 1980

Occupation	Number (000s)	Per cent of full-time workers	Per cent who received premium pay
All occupations	16,600	23.1	40.4
Professional, technical	3,018	24.0	21.4
Managers and administrators	3,513	41.4	12.7
Salesworkers	1,106	31.6	13.5
Clerical	1,620	11.8	58.5
Craft	2,655	25.1	65.8
Operatives, except transport	1,646	18.0	84.4
Transport equipment operatives	938	33.0	52.9
Laborers, except farm	528	17.3	69.3
Service workers	1,172	16.8	40.7
Farmworkers	404	47.8	10.9

Source: Taylor and Sekscenski (1982, p. 50).

> The difference is due mainly to the coverage and exemption provisions of the FLSA. The effect of these provisions is probably reflected by the fact that in 1978, the year after the 1977 amendments to the FLSA, the highest percentage ever of service-producing employees were earning premium overtime pay.

On the basis of the rather casual empirical evidence discussed above, it appears as if the FLSA may have had some significant impacts on the labour market in the United States.

Finally, when one looks at the survey results by marital status of the employees, one finds that married men were the most likely to work more than 40 hours a week. Single men were the least likely. Among women, those who were divorced, separated, or widowed were the most likely to work long hours; married women living with their husbands were the least likely. Leonard (pp.90, 91) has made two rather salient observations on these findings:

> It may well be that as two-income households become more common, the likelihood that either the husband or the wife will work extended hours will decline. The relatively high percentage of divorced, separated or widowed women who work extended hours is presumably indicative in part of the greater financial needs that this group generally has.

U.S. FAIR LABOR STANDARDS ACT

Overtime in the United States is regulated by federal laws, state laws, and municipal ordinances. The most important source is the U.S. Fair Labor Standards Act of 1938 as amended at least 25 times since its initial implementation. Following the November 1985 amendments, approximately 70 per cent of the civilian labour force is now covered by this Act.

The "Finding and Declaration of Policy" (Section 2(a) and (b) of the Act) sets out the principal objective of the Act:

> (a) The congress hereby finds that the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers (1) causes commerce and the channels and instrumentalities of commerce to be used to spread and perpetuate such labor conditions among the workers of the several States; (2) burdens commerce and the free flow of goods in commerce; (3) constitutes an unfair method of competition in commerce; (4) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce...
>
> (b) It is hereby declared to be the policy of this Act...to correct and as rapidly as practicable to eliminate the conditions above referred to in such industries without substantially curtailing employment or earning power.

The main features of the Act concerning the payment of premium pay for overtime work are described in Appendix A at the end of this paper. As indicated by Leonard (1983, pp.17-22), the major groups not covered by the requirement for the payment of premium pay for overtime hours worked, as of 1983, are:

- white collar, 15.5 million workers;
- retail, 4.2 million;
- motor carrier, 1 million nonsupervisory employees;
- agriculture, 1.5 million; and
- domestic service, 600,000.

The FLSA does not mandate the need for employers to receive prior approval by the Department of Labor in order to schedule overtime hours for their employees. Neither are employers required

to notify the Department that their employees are working overtime. Employers must keep records and hours of their employees. These records need to be kept for only two, and in some case three, years; and they must be made available for inspection by the Department of Labor if requested.

There have been several important changes to the Act during the past decade. The 1974 amendments expanded the coverage of the Act to include virtually all federal, state, and local government employees and some domestic workers. These amendments also removed the prior exemption for employees of hotels, motels, and restaurants and required premium overtime pay for these groups after 48 hours a week. In 1977, amendments increased in stages the threshold of coverage for certain smaller ratio and service establishments from $250,000 annual gross volume of sales to $362,500, starting in 1982. These amendments also lowered the overtime threshold for employees of hotels, motels, and restaurants from 48 to 40 hours a week. In 1985, changes were introduced that increased the flexibility and options available for state and local governments in scheduling and compensating overtime work.

During the past decade, two hearings were initiated by the Subcommittee on Labor Standards of the House of Representatives Committee on Education and Labor. The 1979 hearings considered a proposed major revision to the overtime compensation requirements. The 1985 hearings considered modifying the rules for state and local government employees in light of the Supreme Court ruling in the Garcia v. San Antonio Metropolitan Transit Authority et al.

HEARINGS ON PROPOSALS TO AMEND THE FLSA

1979 Hearings

Introduction:

On February 1, 1979, a bill was introduced in the House of Representatives to revise the overtime compensation requirements in the FLSA. The bill had three major provisions:

- a gradual reduction, over a four-year period, in the standard workweek, from 40 to 35 hours;
- an increase in the overtime premium from 1.5 to double the regular rate of pay; and
- abolition of compulsory overtime.

Basically the bill had two objectives:

- to increase the number of jobs and so contribute to reducing the unemployment rate; and
- enable workers to decide if and when they would work overtime.

Arguments in Support of Proposed Revisions:

Those who testified in favour of the bill, essentially union representatives, argued that the bill, by raising the overtime premium and hence increasing the deterrence effect of the use of overtime, would result in more jobs. Congressman John Conyers, who introduced the bill, stated that if jobs were created for all the work that would result if the workweek were reduced to 35 hours, it roughly turns out for each [one-hour] reduction in hours from 40 down

to 35, you could get 1.5 million additional jobs. (U.S. Congress (1979, p 17). Conyers supported this position by arguing:

> There is another reason that recommends reduced working hours as a means to combat unemployment. Recent trends in the composition of the workforce -- the growing participation of women, the increasing number of multiple-earner households...and the reduced size of families -- point to the shorter workweek as a sensible and desirable method for combatting unemployment...and creating new sources of employment. (p. 20).

Conyers was suggesting that the reduction in the standard workweek would accelerate the growth of the part-time/temporary job market.

The reasons for focusing on the possible employment/unemployment effects of the proposed revisions were expounded very eloquently by Frank Runnels, the president of the All Unions Committee to Shorten the Workweek:

> Each one per cent of unemployment equals a $24 billion loss to the U.S. Treasury and a $65 billion loss of the total economy...Over the period 1970-76, the economy lost about 38 million man-years of potential employment. The production lost to unemployment in the years 1970-76...amounted to a total of $600 billion, computed in 1972 dollars. Simple arithmetic shows that the typical family of four lost about $12,000 in under utilization of resources. (p. 79).

In addition to the production losses, high levels of unemployment also lead to increases in crime and health problems, deterioration in the productivity of human capital, and reduced incentives for investment in human capital.

The deterrence effects of the 1.5 overtime pay premium had been gradually but significantly eroded by the substantial increase in fringe benefits that were not linked to the hourly wage rate. Consequently, an increase in the premium was necessary to restore the deterrence effect. At the hearings, Professor David Gordon (New School for Social Research) presented another reason for increasing the overtime premium:

> Firms have come to prefer overtime to new hires because it is less expensive for them to do so. But...the external social costs of their private choices are enormously high. Others must pay the cost of unemployment, welfare, crime, the illness which unemployment induces -- much less the loss in aggregate productive potential from abandoning generations of workers. While business may complain...it may be less expensive for the society as a whole to pressure businesses to spread employment more widely than to accept firms current hiring preferences. And the way to do this with the least bureaucratic regulation is simply to shift the balance between the relative costs of overtime and new hires. (p. 189).

Congressman Conyers suggested that a reduction in the standard workweek would lead to improvements in worker morale and productivity and reductions in the $20-30 billion lost annually by business because of absenteeism and job-related stress (p. 29). Dr. Rudolph Oswald, director of research at the time for the AFL-CIO, emphasized that the government should take the lead in establishing the standard workweek, and that 35 hours was the right standard for the 1980s and 1990s. Professor Wassily Leontief (New York University) added that while he preferred gradual changes in the workweek, the provision in the bill to reduce the standard workweek would not be unprecedented since other countries were already moving in this direction (p. 181).

Finally, with respect to the voluntary overtime provision, Oswald urged this approach so that employees would not have to worry about losing their jobs if they refused to work overtime. He added:

> The elimination of compulsory overtime...is designed to encourage employers and employees to jointly establish a voluntary system which not only takes into account working mothers but also aids those workers attending schools on a part-time basis or those who find it necessary to work two jobs. (p. 30).

Professor Daniel Hamermesh (Michigan State University) commented that although the concept of compulsory overtime was hard to define and most overtime hours worked were not compulsory or involuntary:

> Nonetheless, there are undoubtedly many instances of workers who take jobs at a wage insufficient to compensate for the overtime they discover they must put in...Since the worker is often locked into his job y vested pensions, seniority and other things that inhibit his leaving and make a discharge very costly to him, he must bear the cost of overtime work that, if he were free to choose, he would not accept even at time-and-one-half pay. For such workers those overtime hours may truly be said to be involuntary. Elimination of compulsory overtime would improve the welfare of such workers. (p. 273).

Arguments Against Proposed Revisions:

Opponents of the bill, primarily economists and representatives of the business community, argued at the hearings that the proposals would do little to improve employment prospects, but would create other problems. Professor Sar Levitan (George Washington University) noted:

> [The increased] demand for labor may not materialize...Employers who decide to expand their labor force might find in many cases that workers are not easily "replaceable parts." Occupational shortages may

> exist in the midst of high levels of unemployment. In order to maintain work schedules, employers may, therefore, find themselves forced to employ partially or completely the same labor force, paying for more hours of overtime at higher penalty rates. Thus...a decrease in regular weekly hours from 40 to 35 would increase the actual wage cost for a 40-hour week by more than 12.5 per cent. (p. 105).

Levitan also expected unions to demand of employers that the reduction in the regular workweek not be accompanied by any reduction in the weekly wage. This was not an unrealistic assumption since several union representatives had hinted at this outcome. The resulting increase in the average hourly wage rate would lead, according to Levitan, to a further substitution of capital for labour. Hamermesh summarized the possible employment and hours effects of the higher wage rates that would result from the proposed revisions:

> ...the reduction in the person hours [of employment, the product of higher wage rates] will roughly offset the induced increase in employment (the product of the shorter workweek). The net effect is likely to be no increase in employment, but instead a reduction in total labor hours worked in the economy. With fewer hours worked in total, total output will drop, labor earnings will be reduced economy wide...At a time when, because of the slowdown in productivity growth over the past ten years, the growth in real incomes has slowed, the proposed increase in the premium would be a serious blow to workers' desires to improve their standard of living. (p. 274).

Another argument against the bill concerned the potential inflationary effects of the higher labour costs that the revisions would generate. The incompatibility between a 35-hour workweek and the round-the-clock operations of certain types of businesses was pointed out by another critic (Richard Benefield, American Hotel and Motel Association). In order to minimize the number of overtime

hours, employers would have to schedule either three 12-hour days or four, 8-hour days. In the latter case, employees would experience a 20 per cent reduction in their weekly hours without any compensating increase in their hourly wage. Many of the people employed by companies with round-the-clock operations could ill afford any reduction in their take-home pay, let alone one of this magnitude.

Following in this line of argument (and in some respects the latter argument made by Hamermesh, above), Dr. Richard Landry (the deputy chief economist of the U.S. Chamber of Commerce) stated that:

> The goal of discouraging overtime...would place the government in the position of depriving workers at their peak economic period (married men between the ages of 25 and 54) of the opportunity to earn enough to support a family during these highly inflationary times. (p. 115).

The voluntary overtime proposal also came under attack. The two basic arguments involved scheduling and hold-out problems. Levitan, Kosters, and others stressed that the requirement for individual consent to work overtime would hamper management scheduling and planning. Levitan added that this rule "would reduce the effectiveness of unions to bargain for their members" (p. 105). Kosters suggested that:

> ...since the economic benefits to employers and to workers of scheduling overtime vary greatly among work situations, provision for acceptable diverse arrangements, arrived at voluntarily, for scheduling overtime would be far less costly to the economy than this individual consent provisions. (p. 231).

Furthermore, this proposal would enable a single employee to

hold the company and other employees to "ransom." According to Landry:

> Placing a voluntary overtime clause in the law means that one worker by refusing overtime may deprive perhaps 100 persons of overtime and the extra income that they desire if they are involved in an assembly-line operation where each person is essential to the task. It may also deprive the employee of a responsibility of placing his firm in a position of being a dependable source of a product if the firm cannot deliver goods [on time]. Making overtime voluntary would also drive a wedge between what an employee regards as his welfare and that of the employer. This runs contrary to the attitudes in other private enterprise economies (notably Japan and West Germany) where employees and employers view their welfare as mutual and work to improve the operations of the firm. (p. 115).

Landry also argued that the bill was just an attempt by unions to gain through the legislative process what they were unable or unwilling to achieve through the collective bargaining process (p. 118). Consequently, the passage of the bill would tip the bargaining scale to the advantage of the unions. Hamermesh also argued in favour of government's limiting its interference in the collective bargaining process:

> The objective of any overtime legislation should be to maximize the ability of workers and employers to reach an agreement that benefits both. This is done best in the context of a labor market in which neither side can easily impose its will on the other, and in which neither is constrained by artificially imposed restrictions on behavior. (p. 274).

Hamermesh, however, was in favour of banning compulsory overtime, although he was opposed to the reduction in the standard workweek and the imposition of a double-time overtime pay premium by legislative fiat. His conclusions ignore two important externality arguments

that were presented by others and could support different conclusions; namely, the hole-out problem with voluntary overtime, and the unemployment externalities caused by excessive overtime.

Conclusion:

The bill was not passed. There appeared to be two overriding concerns against the proposed revisions. The committee was worried about the potential inflationary effects of the bill at a time when double-digit inflation rates were looming on the horizon. Moreover, the committee was concerned about the effects the bill would have on the competitive position of U.S. companies relative to Japanese and West German companies and firms in the newly industrialized countries around the Pacific rim. One has to remember that the U.S. trade balance was hemorrhaging badly at that time and the value of the U.S. dollar was dropping sharply against the yen and the mark.

1985 Hearings

Introduction:

A bit of history helps us to understand the reasons behind the 1985 hearings before the Subcommittee on Labor Standards. State and local government employees first because subject to the overtime pay provisions of the FLSA following the 1966 amendments. These amendments extended coverage under the FLSA to state and local government employees engaged in the operation of hospitals, residential care facilities, schools, and mass transit systems. The 1972 amendments extended coverage to employees of public preschools. The 1974 amendments extended the provisions of the FLSA to virtually all of the remaining state and local government employees. However,

on June 24, 1976, the Supreme Court ruled in National League of Cities v. Usery that the minimum wage and overtime pay provisions of the FLSA were not constitutionally applicable to the integral operations of the states and their political subdivisions in areas of "traditional governmental functions." The Court specifically defined such functions to include schools, hospitals, fire prevention, police protection, public transit, sanitation, public health, parks, and recreation. On February 19, 1985, the Supreme Court ruled in Garcia v. San Antonio Metropolitan Transit Authority that the minimum wage and overtime provisions of the FLSA did apply to the public mass transit employees. Thus, the Court effectively overruled its 1976 decision. Consequently, the hearings were convened in order to examine the effects of FLSA compliance on state and local governments and decide whether the FLSA rules should be changed for employees of these governments.

The major area of contention that arose in the hearings was the severe restrictions imposed by the FLSA on the use of compensatory time off in lieu of overtime cash payments. The FLSA would have made "comp" time non-negotiable and sharply curtailed its use. Under the FLSA an employer cannot credit an employee with compensatory time-off, even if credited at a time-and-one-half rate, for overtime earned if the time off is to be taken at some mutually agreed-upon date subsequent to the end of the pay period in which the overtime is earned. The only circumstances in which anything like comp time could be used would be under the "time-off" plan. Under this plan, an employee who works overtime during the first week of a two - or four-week pay period could be compensated by reducing the number of

hours of work in the following workweek (or weeks) in the same pay period by 1.5 times the number of hours of overtime during the preceding week (or weeks) in the same pay period. The time-off plan has been rarely used during the history of the FLSA because the arrangement is difficult to administer since the employer must anticipate the workload requirements in all weeks of the pay period.

Arguments in Favour of Special Exemptions:

Mayor Ed Koch of New York City argued, on behalf of the National League of Cities and the U.S. Conference of Mayors, that:

> The time off plan is of no use to cities with weekly pay periods and of almost no utility to cities with two-week pay periods. First, it cannot be used at all to counterbalance overtime hours that are worked in the second week of a two-week pay period. Second, it would be an administrative nightmare to implement. And third, it does not provide the city with sufficient flexibility to respond to emergencies which tend to occur in concentrated periods of time. (U.S. Congress 1985, pp. 70-71).

Not only is comp time beneficial for cities and states to deal with emergencies without incurring unanticipated liability for overtime compensation, but it is also advantageous for employees. Koch suggested that employees could take extended or additional vacations with the time accrued in the form of comp time (p. 71). Representatives of police and firefighters also highlighted the importance of comp time and the ability to take additional time off. Anita Anderegg, speaking on behalf of the National Association of Counties, commented that [as] public sector jobs require a great deal of patience, our employees value the opportunity to get away from work occasionally without having to utilize vacation time. (p. 202).

Another purported benefit for state and local governments of comp time is related to the effects of cash payments on pension and government expenditure. Cash payments for overtime, offered in place of comp time to employees in their last few years on the job, could lead to substantial increases in pension liabilities for these employees. The additional pension costs could be ill-afforded by most cities and states struggling to balance their budgets.

Since both employers and employees supposedly would stand to benefit from comp time, Mayor Koch recommended that this issue be left to collective bargaining and not be precluded as a negotiable item by subjecting states and cities to the FLSA. Failing a complete exemption from the FLSA, a novel compromise was suggested: overtime could be compensated entirely in cash at the premium rate when it was worked, or some or all of it be banked to be paid out at a later date, when employees decide to take a leave from their jobs. Under present circumstances, these leaves would be without pay.

Arguments Opposed to Any Modifications:

One argument questioned the fairness of extending coverage of the FLSA to the private sector and exempting the public sector when both might be competing in the marketplace in the provision of a particular service (e.g., trash collection, hospitals, schools). This concern (p. 97) takes on added importance in light of the debate over privatizing selected public-sector services/activities. Victor Gotbaum, representing the American Federation of State, County and Municipal Employees, suggested that, on the basis of surveys of their

collective bargaining agreements, these employees preferred cash to comp time as compensation for overtime work (p. 94). Furthermore, the pension fund implications were poorly understood by employees. Rules, such as those in New York City, that imposed limits on the total cash compensation for regular and overtime hours and so lead to mandatory comp time in place of additional cash compensation for overtime, in order to control future pension liabilities, were viewed as unfair because they transferred the financial burden on to retired government employees. Thus, while the argument to leave comp time to collective bargaining might sound convincing, the fact that a very large proportion of state and local employees were not members of any union (p. 137) would leave many government employees subject to the whims of their employers and hence be prevented from having the option of cash compensation for overtime. For these employees, "mandatory" comp time might be the inferior option.

Gotbaum also argued that the FLSA provided state and local governments with a significant degree of flexibility in resorting to comp time (p. 92). Professional and supervisory employees were exempted from the overtime provisions. And the overtime rules for police, firefighters, and workers in hospitals were also more flexible than for all other employees covered by the Act. Finally, Leonard stated that comp time would defeat the objective of an overtime pay premium serving as a deterrent to the use of overtime because comp time would be granted. Providing state and local governments with complete or partial exemption from the FLSA would run counter to the objective of deterring overtime in order to create

additional jobs, because such governments would be free to use compensatory time off.

Conclusion:

As a result of these hearings, the Fair Labor Standards Act was amended as follows. State and local governments were permitted to provide to their employees compensatory time off instead of premium overtime wages. The rate of such comp time could not be less than 1.5 hours for each hour of overtime. Moreover, comp time could be paid in lieu of cash payments for overtime only pursuant to the provisions of a collective bargaining agreement, memorandum of understanding, or any other agreement between the state or local government and representatives of their employees, or, where employees are not represented, pursuant to an agreement or understanding arrived at between the employer and employee before the performance of the work. Limits were also placed on the accrual of comp time. Employees whose work involves public safety, an emergency response, or a seasonal activity could not accrue more than 480 hours of comp time. Employees engaged in any other work could not accrue 240 hours of comp time. Furthermore, employees who accrue comp time and request to use it must be allowed to use it within a reasonable period after the request, provided that the use of the comp time did "not unduly disrupt the operations" of the state or local government. Finally, at the time of an employee's termination of employment, she or he must be paid for any unused compensatory time. Each hour of unused comp time must be paid at the higher of the average regular rate received for the last three years of the employee's employment, or the final regular rate received by the employee.

The House of Representatives did not display much interest in 1979 or 1985 in tightening up the overtime provisions of the FLSA. The politicians were subject to opposing forces from unions and employers. However, (according to my discussions with officials within the Department of Labor), the opinion of employers dominated because of the shifting political sentiment over this period towards conservatism, with its emphasis on fiscal prudence and the primacy of the marketplace, and because of concern over the eroding competitive position of U.S. industry in the global marketplace. Congress did not want to introduce rules that involved increased government intervention in the marketplace, hence the willingness to leave more issues to be decided by collective bargaining. Congress also did not want to subject the state and local governments to all the provisions in the FLSA for fear that this might increase expenditures and budgetary deficits for these levels of government. Finally, Congress accepted the argument that tighter rules would increase labour costs and so accelerate the competitive decline of U.S. industry. In an era favouring deregulation, additional government regulations were out of the question.

STATES

Overview of Current Legislation

Table 2 provides a summary of the major overtime provisions in each of 49 states (Hawaii was excluded). Thirty of the states have their own overtime laws. The 19 that do not are concentrated in the Southeast (Alabama, Florida, Georgia, Louisiana, Mississippi, South

Table 2
Overtime Premium Pay Standards,
By State July 1, 1986

State	Premium pay after designated hours		Overtime Premium rate (X regular rate)
	Daily	Weekly	
Alabama	-	-	-
Alaska	8	40	1.5
Arizona	-	-	-
Arkansas		40	1.5
California	8	40	1.5
	12		2.0
Colorado	12	40	1.5
Connecticut		40	1.5
Delaware	-	-	-
Florida	-	-	-
Georgia	-	-	-
Idaho	-	-	-
Illinois		40	1.5
Indiana	-	-	-
Iowa	-	-	-
Kansas		46	1.5
Kentucky		40	1.5
Louisiana	-	-	-
Maine		40	1.5
Maryland		40	1.5
Massassachusetts		40	1.5
Michigan		40	1.5
Minnesota		48	1.5
Mississippi	-	-	-
Missouri	-	-	-

Table 2 concluded

State	Premium pay after designated hours: Daily	Premium pay after designated hours: Weekly	Overtime Premium rate (X regular rate)
Montana		40	1.5
Nebraska	-	-	-
Nevada	8	40	1.5
New Hampshire		40	1.5
New Jersey		40	1.5
New Mexico		48	1.5
New York		40	1.5
North Carolina		45	1.5
North Dakota		40	1.5
Ohio		40	1.5
Oklahoma	-	-	-
Oregon	10	40	1.5
Pennsylvania		40	1.5
Rhode Island		40	1.5
South Carolina	-	-	-
South Dakota	-	-	-
Tennessee	-	-	-
Texas	-	-	-
Utah	-	-	-
Vermont		40	1.5
Virginia	-	-	-
Washington		40	1.5
West Virginia		40	1.5
Wisconsin		40	1.5
Wyoming	8	48	1.5

Notes: - Denotes no state legislation; a blank denotes no separate daily or weekly provision.
Source: U.S. Department of Labor

Carolina, Tennessee, and Virginia) and the Midwest (Idaho, Indiana, Iowa, Missouri, Nebraska, South Dakota, and Utah). Three others are in the South/Southwest (Arizona, Oklahoma, and Texas). The other one is in the Mid-Atlantic region of the United States (Delaware). Many of these 19 states have economies that are more dependent upon agriculture than economies in other states. Since the overtime provisions in the 30 other states tend to follow the rules and exemptions in the federal FLSA, many employees left uncovered in these states would not have been covered even if there had been legislation; that is, many of them are agriculture who would likely have been exempt even if the state lost its own overtime laws. In addition these 19 states without legislation on average tend to lean more toward the conservative end of the political spectrum than do the other states. Thus, they would tend to be more pro-business and less inclined toward government intervention in the market.

Twenty-five of the states have a 40-hour-per-week standard, three have a 48-hour standard, one a 46-week rule, and one a 45-hour rule. In addition to weekly standards, six of the states have daily standards. Alaska, California, Nevada, and Wyoming have 8-hour-per-day rules, while Oregon has a 10-hour rule and Colorado a 12-hour standard. In all of the 30 states the overtime pay premium is 1.5 times the regular rate and the calculation of the regular rate follows the same procedures as outlined in the FLSA. In addition, California requires a double-time pay premium for each hour worked in excess of 12 hours per day.

Special Rules and Exemptions in State Legislation

While most rules and exemptions tend to mirror the federal legislation, there are some notable differences in some of the states, as outlined in the following paragraphs:

Alaska

1. Under a voluntary flexible work-hour plan, with a written, signed employee/ employer agreement filed with and proved by the Department of Labor, a 10-hour day, 40-hour week may be instituted with premium pay after 10 hours a day instead of after 8 hours.

2. The premium pay requirement is not applicable to employers with fewer than 4 employees.

Arkansas

1. Premium pay is required after 48 hours a week in hotels, motels, and restaurants, and in tourist attractions with annual sales of less than $362,500.

2. The premium pay requirement is not applicable to employers with fewer than 5 employees.

California

1. State legislation covers employees in the following 15 industries and occupations: manufacturing industry; personal service industry; canning, freezing, and preserving industry; professional, technical, and clerical occupations; public housekeeping industry; laundry and dry cleaning industry; mercantile industry; handling products after harvest; transportation industry; amusement and recreation industry; broadcasting industry; motion picture industry; preparing agricultural products for market; agricultural occupations.

2. A 10-hour day, 4-day week may be instituted without premium pay after 8 hours if a voluntary written agreement is approved by the employer and at least two-thirds of the affected employees. In certain continuous-operation manufacturing facilities, a 12-hour day may be instituted.

3. Hospital employees may agree to work three 12-hour days or five 9-hour days a week without premium pay after 8 hours, but premium pay must be paid after 40 hours a week.

4. For the seventh consecutive day of work, premium pay is required at 1.5 the regular hourly rate for each of the first 8 hours and double time for each of the following hours.

5. Premium pay is not required for employees whose total weekly hours do not exceed 30 and whose total hours in any one workday do not exceed 6.

6. In agricultural occupations, premium pay is required after 10 hours a day. The premium rate is 1.5 the regular hourly rate for every hour beyond 10. For the seventh day of the week, the premium pay rules are the same as for the other covered industries and occupations.

7. Live-in employees in the household occupations are eligible for premium pay only for the hours worked on the sixth and seventh workday of the week. The premium rate is 1.5 for the first 9 hours on these days, and double time for each hour beyond the ninth.

8. Premium pay is required after 56 hours a week in ski establishments, 54 hours a week for personal attendants, organized camp counsellors, and certain other occupations.

Connecticut

Premium pay is required at 1.5 the minimum wage rate for the seventh consecutive day of work in restaurants.

Illinois

The premium pay requirement is not applicable to employers with fewer than 4 employees.

Kentucky

In addition to the employees exempted from the overtime provisions of the federal Fair Labor Standards Act, the following employees are exempted as well in the states legislation: employees of retail stores, service industries, hotels, motels, and restaurant operations whose average annual gross volume of sales (exclusive of excise taxes at the retail level) is less than $95,000 for the five preceding years; certain employees of retail stores; employees of restaurant, hotel, and motel operations; employees whose function is to provide 24-hour residential care on the employer's premises in a parental role of children who are in the care of private, nonprofit childcaring facilities.

Maryland

1. Premium pay required after 48 hours a week in bowling alleys and for residential employees of institutions, other than hospitals, primarily engaged in the care of the sick, aged, or mentally ill.

2. Premium pay required after 60 hours a week for employees engaged in agriculture.

Missouri

In the mining, mechanical, chemical manufacturing, or

smelting business, employers cannot work their employees for more than 8 hours a day without the employees' consent.

Nevada

By mutual employer/employee agreement, a scheduled 10-hour-per-day, 4-day-per-week schedule may be worked without premium pay after 8 hours.

New Mexico

By mutual employer/employee agreement, a written waiver may be executed to permit work up to 54 hours in a 7-day period, with premium pay after 54 hours.

North Carolina

The premium pay requirement is not applicable to employers with fewer than 3 employees.

Ohio

The premium pay requirement is not applicable to employers with gross annual sales of less than $150.00.

Oregon

Premium pay is required after 10 hours a day in nonfarm canneries, driers, or packing plants, and in mills, factories, or manufacturing establishments (excluding sawmills, planing mills, shingle mills, and logging camps).

Rhode Island

Premium pay of 1.5 regular rate required for work on Sundays and statutory holidays.

Utah

Overtime work for women employees is voluntary.

Washington

Premium pay is not applicable to employees who request compensating time off in lieu of premium pay.

Wisconsin

No employee can be asked to work for a period of time during any day, night, or week that is dangerous to the person's life, health, safety, or welfare. The Department of Labor will investigate and determine the period of time or hours per day, night, or week which will be necessary to protect the employee.

Wyoming

1. The premium pay rules apply only to women employed in manufacturing, mechanical, mercantile establishments, laundry, hotel, apartment house, place of amusement, or restaurant.

2. On the basis of the state's Fair Employment Act, which bans discrimination based on sex, the state recommends that an employer who pays the overtime premium to women employees also compensate the men employees at the same rate.

Special Rules and Exemptions: Summary

As seen, several states (e.g., Alaska, Illinois, Michigan, North Carolina) exempt employers with a small number of workers, generally four or fewer. Alaska, California, and Nevada permit companies to institute a 10-hour day, 4-day workweek without premium pay after 8 hours a day (but after 10 hours a day or 40 hours a week) if a voluntary written agreement is approved by both the employers and their employees. In California, in certain continuous-operation manufacturing facilities, a 12-hour day, 3-day workweek without premium pay after either 8 or 10 hours a day may be instituted. In

New Mexico, by mutual employer/employee agreement, a written waiver may be executed to permit work up to 54 hours in a 7-day period without any premium pay. For each hour in excess of 54 in a week, premium pay is required.

Several states provide partial or complete exemptions from the overtime rules to specific groups or industries. These exemptions differ from those in the FLSA. For example, Arkansas requires premium pay after 48 hours a week for employees in hotels, motels, and restaurants and in tourist attractions with annual sales of less than $362.500. Kentucky exempts entirely employees in certain selected small businesses (defined as having average annual revenues of less than $95,000 during the preceding 5 years), and so does Ohio (small businesses are defined as having gross annual sales of less than $150,000).

California and Maryland provide for the payment of an overtime premium to workers in agriculture. In California, premium pay is required for each hour beyond 10 a day; in Maryland, for each hour in excess of 60 a week. In Oregon, premium pay for overtime beyond 10 hours a day is required only for workers in nonfarm canneries, driers, packing plants, mills, factories, and manufacturing establishments other than sawmills, planing mills, shingle mills, and logging camps.

The overtime rules in Wyoming apply only to women employed in manufacturing, mechanical, mercantile establishments, laundries, motels, hotels, apartment houses, places of amusement, and

restaurants. Wyoming also recommends that because of its Fair Employment Act, employers who pay overtime premiums to women employees should also compensate their men employees at the same rate. WAshington premium pay is not applicable to employees who request compensating time off instead of cash payments for overtime. Lastly, when employers are subject to both federal and state legislation, the more stringent rules apply.

Recent Changes in State Legislation

Table 3 and the following paragraphs summarize the changes that have been implemented since 1978 in state laws regulating overtime or maximum hours per day/week. Only 2 of the 30 states with overtime rules changed the rules since 1978. In 1986, New Hampshire legislated overtime rules for the first time.

Alaska

1980. Exemptions from overtime pay requirements: Work performed under either a flexible work-hour plan that is part of a collective bargaining agreement or a voluntary flexible work-hour plan that has been approved by the labor department.

Arkansas

1983. Tourist attractions with annual sales of less than $362,500 added to list of establishments that must pay overtime after 48 hours a week.

California

1981. Ski establishments must pay overtime after 56 hours a week.

1982. Certain employers who operate a manufacturing facility 24 hours a day, 7 days a week may institute a 12-hour day, 3- or 4-day week without premium overtime pay except for work in excess of 12

Table 3
Changes in Legislation Regulating Overtime, 1978-85, by State

State	1978	1979	1980	1981	1982	1983	1984	1985
Alaska	-	-	L	-	-	-	-	-
Arkansas	-	-	-	-	-	T	-	-
California	-	-	-	L	L	L	-	-
Colorado	-	L	-	-	-	-	-	-
Connecticut	-	-	T	-	-	-	L	-
Georgia*	-	-	-	-	-	L	-	-
Idaho*	-	-	-	-	-	-	-	L
Illinois	-	-	-	-	-	T	-	-
Kansas	-	L	-	-	-	-	-	-
Kentucky	-	-	-	-	L	-	-	-
Maine	-	-	-	-	-	-	-	L
Maryland	T	-	-	-	-	-	-	T
Massachusetts	-	-	-	-	-	L	-	-
Michigan	T	T	-	-	-	-	-	-
Minnesota	-	-	-	-	-	L	-	-
Mississippi*	-	-	-	L	-	-	-	-
Montana	-	L	-	-	-	L	-	L
Nevada	-	-	-	-	-	-	-	L
North Carolina	-	T	-	-	-	L	-	-
Pennsylvania	T	-	-	-	-	-	-	-
Rhode Island	L	-	-	L	-	-	-	T
South DAkota*	-	-	-	-	-	-	L	-
Utah*	-	-	-	-	-	L	-	-
West Virginia	-	-	T	-	-	-	-	-
Wyoming	-	L	-	-	-	-	-	-

1. The following states did not change their existing legislation regulating hours of work or introduce any legislation of this type: Alabama*, Arizona*, Colorado, Delaware*, Florida*, Indiana*, Iowa*, Louisiana*, Missouri*, Nebraska*, New Hampshire[2], New Jersey, New Mexico, New York[2], North Dakota, Ohio, Oklahoma*, Oregon, South Carolina*, Tennessee*, Texas*, Vermont, Virginia*, Washington, Wisconsin.

2. These two states introduced changes in 1986 in both cases tightening up the legislation.

* These states have no legislation mandating premium pay for overtime hours.

L. Regulations loosened; e.g., standard workday lengthened or additional exemptions made.

T. Regulations tightened; e.g., standard workweek shortened or exemptions repealed.

hours a day, 4 days, or 40 hours a week. A voluntary written agreement approved by at least two-thirds of the affected employees and the employer is required.

1983. Workers in underground mines, smelters, and plants reducing or refining ores or metals may work up to 12 hours a day (instead of 8) when the employer and the employee's union have a collective bargaining agreement governing hours and wages.

Connecticut

1980. Employees of hotels, motels, restaurants, bowling alleys, amusement parks, and institutions other than hospitals that are primarily engaged in the care of the sick, aged, or mentally ill must be paid an overtime pay premium after 40 hours a week (instead of 48).

1984. Exempted from overtime pay premium: Firefighters employed by private nonprofit corporations contracting with municipalities for firefighting services.

Georgia

1983. Repealed: Requirement for overtime pay after 40 hours a week for employees of cotton and woolen mills.

Idaho

1985. Work up to 10 hours a day (instead of 8) permitted in surface mines and smelters. Work beyond 10 hours a day may not be required except in emergency situations. Work beyond 10 hours a day or 40 hours a week must be paid at the overtime premium rate.

Illinois

1983. Employees of restaurants and motion picture theatres entitled to overtime pay after 43 hours (down from 46 and 45 hours,

respectively) as of the beginning of 1984, and after 40 hours a week as of July 1, 1984.

Kansas

1979. Public or private emergency medical service personnel would be eligible for premium pay after 258 hours in a 28-day period instead of after 46 hours a week.

Kentucky

1982. Exempted from overtime pay premium: Employees providing 24-hour-a-day residential care on the employer's premises in a parental role to children who are in the care of private nonprofit child caring facilities.

Maine

1985. Exempted from overtime pay premium: Automobile mechanics not paid on an hourly basis, and auto salespersons.

Maryland

1978. Exemption from overtime pay premium repealed: Farm machinery salespersons and employees of nonprofit organizations that provide temporary home care services.

1985. Exemption from overtime pay premium repealed: Employees of legitimate theatres.

Massachusetts

1983. Exempted from overtime pay premium: Amusement parks operated for 150 days or less a year.

Michigan

1978. Overtime requirements extended from employers of four or more employees to employers of two or more workers at any time within a calendar year.

1979. Additional employees subjected to overtime pay requirements, and optional methods of computing overtime pay made available for police officers, firefighters, security personnel in correctional institutions, and resident employees of public hospitals.

Minnesota

1983. Exempted from overtime pay requirements: On-farm silo workers receiving more than the minimum hourly wage rate.

Mississippi

1981. Restrictions on hours of work for persons over age 16 were removed. Hours had been limited to 10 per day in canneries, mills, factories, and manufacturing establishments. Night workers had been limited to 60 hours a week.

Montana

1979. Exempted from overtime pay requirements: Taxicab drivers, employees subject to the maximum hours provisions set by the U.S. Secretary of Transportation, foster parents, and employees of small forestry and lumbering operations.

1983. Exempted from overtime pay requirements: Firefighters working under a collectively bargained work schedule with a public employer.

1985. Local departments of public safety could establish work periods other than 40 hours a week and, if the hours of work do not exceed 2,080 a year, would be exempt from the overtime pay provisions.

Nevada

1985. The provisions covering maximum hours of work permitted in smelters, open mines, surface workings of underground mines, and plaster and cement mills were repealed.

New Hampshire

1986. Enacted legislation setting out overtime rules.

New York

1986. Overtime pay premium increased from 1.5 times the state minimum wage to 1.5 times the worker's regular hourly rate.

North Carolina

1979. Overtime pay premium to be paid after 45 hours a week instead of after 50 hours.

1983. Exempted from overtime pay requirements: Employees of seasonal religious or nonprofit educational conference centers.

Pennsylvania

1978. Hotel, motel, and restaurant employees would be eligible for overtime pay premium after 44 hours a week instead of 48 hours a week, with a further reduction to 40 hours a week at the beginning of 1979.

Rhode Island

1978. Exempted from overtime pay requirement: Salaried employees of a nonprofit, national, voluntary health agency who choose compensatory time off instead of overtime pay.

1981. Exempted from overtime pay requirement: Motor carrier employees whose maximum hours of work are regulated by U.S. Secretary of Transportation.

1985. Exemption from overtime pay requirements repealed: Salaried employees receiving at least $200 per week unless they are employed in an executive, administrative, or professional capacity.

South Dakota

1984. Prohibition on maximum of 10 hours a day of work amended to permit longer workday if agreed to by both employer and employee.

Utah

1983. Work in excess of 8 hours a day permitted in smelters and underground mines or workings if Industrial Commission certifies that such work is not detrimental to the workers.

West Virginia

1980. Overtime pay premium required after 40 hours a week instead of 42 hours.

Wyoming

1979. Overtime beyond 8 hours a day and up to 16 hours a day permitted in underground mines if there is mutual agreement between employer and employee.

Trends

Of the 36 changes that have been made since 1978 (two of them in 1986), 14 tightened up the regulations (by reducing either the standard workweek or the number of exemptions) and 22 relaxed the rules. The only trend that is apparent from the data in Table 3 is that the fewest number of changes are implemented in election years (the even-numbered years). This might reflect a desire by the legislators not to risk antagonizing either the labour or business constituency prior to an election and perhaps explains why in 1986 no states, in responding to my survey (see the following section), indicated that any possible revisions were being considered.

North Carolina and West Virginia were the only states to reduce their definition of the standard workweek across the board since 1978. Many of the other changes implemented during this period were aimed at reducing the number of discrepancies between the state laws

and the FLSA. So as to not complicate matters for employers, the states did not want to have overtime rules that differed to any great extent from the federal law.

Survey Summary

A one-page questionnaire was sent to all 49 states (listed in Table 2). Useful responses were received from 19 states (summary of the results is presented in Table 4), with a greater number of states responding to the request for information on the legislative history of their overtime rules, current legislation, and any existing studies on the impacts of their rules on the behaviour of their labour markets. In addition, labour department officials were interviewed in the following states: California, Massachusetts, New Hampshire, New York, Ohio, and Texas. The objective in both these exercises was to obtain information on the following questions:

- reasons for enactment/nonenactment of legislation;
- economic impacts of the legislation;
- importance of hours-of-work and overtime issues;
- appropriate length of standard workweek;
- factors inhibiting the use of alternatives to overtime;
- future changes in legislation.

Before reviewing the survey and interview responses, it is important to note that, among the respondents, with the exception of one study in California there were no other studies that had been commissioned to examine the possible labour market effects of changes in overtime premium rules and coverage. Even the California study was of limited

value because of its poor design. Legislators and bureaucrats essentially responded to external pressures for change and made decisions on the basis of some meetings or hearing.

Why has your state's legislation gone beyond/not gone beyond the overtime and hours-of-work rules in the FLSA?

There were four basic reasons offered. Three of them explained shy state legislation did not go beyond the federal Act in terms of a shorter workweek, higher overtime premiums, and/or fewer exemptions. Of these, compatibility with the federal law and other state laws in order to reduce the administrative and compliance burdens for both employers and government bureaucrats was the first reason. The second was to reduce the regulatory and resulting paper burdens on small business. (All governments seemed to favour the small business sector and expressed interest in promoting the growth of this sector.) An absence of political pressures for change was a third reason. The discussions with government officials clarified this position. Although there were demands from labour to tighten up the overtime rules, there were more pressing labour law reform issues. Thus, employee representatives either placed the overtime issue on the back-burner or traded it off for government action or consideration of higher-priority issues. In some states, organized labour did not have much political clout, and so the business point of view was used as a proxy for the general public's perspective.

Interestingly, the one reason cited for stronger overtime rules at the state level was the need to protect employees working in small companies or in the agricultural sector. California government

officials, who were the strongest exponents of this view, argued that these workers were generally the lowest paid and unorganized. Without the protection of the state's labour laws, their economic position would be even worse.

A mandatory shorter workweek and/or higher overtime pay premium lead to an increase in the number of jobs in your state and/or affect your state's ability to attract new investment?

The majority of the respondents did not see either of these changes resulting in an increase in the number of jobs. In the cases where seasonal or unexpected demand pressures led to the use of overtime, there was little reason to believe that higher overtime costs would lead firms to hire more people in order to deal with what was essentially a short-term situation. When firms resorted to a more persistent use of overtime because of a shortage of skilled and qualified workers, the suggested changes would not resolve the underlying problem. Companies might search for more capital-intensive production techniques in order to lessen the adverse cost impacts. This argument was also put forth for cases not involving a shortage of workers.

There was a more even split in the responses on the possible effects of more rigid rules on the state's ability to attract investment. The states that did not believe there would be an effect reached this conclusion because either they expected legislation in their state to follow the leads of other states (and so there would be no relative deterioration in their competitive ability to attract investment), or they did not anticipate introducing such changes.

The states that believed there would be a negative effect espoused the conservative viewpoint that additional government intervention/regulation would be seen as anti-business and so serve as a deterrent for attracting new investment.

What is the appropriate length for a standard workweek?

The responses to this question are not presented in Table 7. All the states that answered this question cited 40 hours. The basic reason offered in support of this response was that there was no noticeable trend away from this standard and there were no obvious political pressures for change. The increasing numbers working part-time were not considered as an indication for a change in the full-time workweek. The increase in part-time employment was seen as a reflection of several socio-economic and demographic trends, none of which had a bearing on the appropriate length of the full-time workweek.

Why do companies opt for overtime?

Three reasons were mentioned repeatedly:

- hiring and training costs;
- the relative increase of fringe benefits that were not directly tied to the hourly wage rate;
- shortage of skilled workers.

A shorter workweek would only exacerbate these problems and not make overtime significantly less attractive. A higher overtime premium might tip the scales in the case of the relative increase in fringe

benefits and might encourage firms to invest more in the training of workers.

Three other reasons were suggested: a reluctance to hire more union workers; uncertainty over the persistence of short-term demand fluctuations; and exemption from legislation and absence of a collective bargaining agreement.

Is compensatory time-off, at a premium rate, a feasible alternative to cash payments for overtime?

For state employees the answer was generally yes because of the cost-savings potential to the government. For private employees there were district differences of opinion. Those that did not think it was a feasible option mentioned scheduling problems for employers and that compensatory time would defeat a principal objective for cash payments for overtime; namely, the deterrent effect for the use of overtime and the desire to create more jobs. Those that supported this option did so primarily because of their own state's experiences. They believed that employers would be able to determine the scheduling of comp time and so would be able to reduce their labour costs. But regardless of what position was taken, there were questions concerning how the decisions were to be made on when the comp time would be used. Surprisingly, no one mentioned the pension effects. However, when this effect was mentioned in the interviews, the typical reaction was that it could drive a considerable wedge between the desires of employees for cash and those of employers to reduce costs and so make comp time difficult to negotiate.

Is your State considering any changes in the overtime rules?

Only Wyoming saw the need for any significant change in the legislation. Wyoming legislature was looking at changing the law to extend the coverage to male workers. All other states expressed satisfaction with the status quo. As suggested above, the lack of interest might be coincidental with 1986 being an election year (and thus no government wanting to discuss possibly controversial changes). Some states did point out that there was no apparent demand for any change.

Enforcement of the legislation

Although there was no question on the survey concerning enforcement problems, there was a request for information on each state's policy and experience in enforcing the law, and this matter was raised in the interviews. With the exception of California, where periodic random checks of companies' employment records were made to spot violations, all (responding) states with overtime rules depended on complaints initiated by employees before launching an investigation. However, because of serious understaffing, the states (with the exception of California) could not adequately investigate the complaints. Therefore most states did not follow up on complaints that were covered by the federal Act, referring the cases to regional investigators from the U.S. Department of Labor. For the other cases, they performed a superficial examination of company records at best. The government officials speculated that the violations uncovered represented a small fraction of all violations of the state laws. They believed there were fewer violations by the companies covered under the FLSA. Adverse public relations for violating a

federal law appeared to be a more significant factor for large, national companies than for smaller, regional companies violating state laws.

Additional comments

The Department of Jobs and Training in the State of Minnesota suggested that a shorter workweek might lead to union demands for mandatory overtime for currently employed members. That is if the reduction in the weekly hours is not sufficiently offset by a higher wage rate, then the demand for overtime could rise as workers attempted to maintain their standard of living. This might lead to union demands that employers resort to a certain number of overtime hours before they hire additional workers.

Department of Labor in the State of Rhode Island suggested that if any state attempted to tighten its overtime rules and in the process moved out of sync with the federal law, there would be a dramatic increase in the number of employers who willfully would disregard the new rules. This would lead to sharp increases in enforcement costs that might not be supported by state budgets. As a result, there would be little increase in enforcement and prosecutions. Consequently, more companies would be encouraged to violate the new rules.

DISCUSSION OF POLICY ALTERNATIVES

Special Insurance Fund

During the 1979 hearings before the subcommittee on Labor Standards of the committee on Education and Labor, Ken Morris, a member of the

international executive board of the United Automobile, Aerospace and Agricultural Implement Workers of America, proposed a slight variation of the bill under consideration (U.S. Congress 1979, 43). Employers would be required to pay double time for overtime hours; but employees would continue to receive only time-and-one-half, so that they would not be encouraged to demand more overtime and thus defeat the employment-creation objective of the bill. The difference in the overtime premium and payments would be put into a special fund. The money in the fund would be used for a variety of purposes, all aimed at reducing the level of unemployment and assisting those unemployed. The fund could be used to finance training programs, job placement services, worker mobility assistance, and extended unemployment insurance benefits.

Worksharing Programs

Sar Levitan recommended worksharing as an alternative approach to alleviate some of the severest economic consequences of weak labour markets and high unemployment levels (U.S. Congress 1979, p. 105). The shorter workweek and double-time provisions for the overtime pay premium were in part directed toward promoting worksharing by reducing the advantages of overtime over the combination of shorter hours and higher employment levels. The efficacy of worksharing and the role for overtime regulations has been debated. Supporters of worksharing have argued that this would foster a higher degree of job attachment and worker loyalty which together with preventing the obsolescence of skills would lead to higher productivity levels. Opponents have countered that worksharing, whether mandated or government subsidized, would discourage firms from adapting to

technological, organizational, and competitive changes. This would lead to a deterioration in the economy's longer-term job-creation potential. According to one source, there has been a decline in union support of worksharing arrangements:

> In the mid-1950s, about 1 in 4 collective bargaining agreements contained provisions for reduced hours in the event of an economic downturn, but by the mid-1970s, fewer than 1 in 5 major agreements included such clauses. (Bednarzik 1980, p. 4).

Bednarzik suggested other reasons why worksharing was likely to be impractical. Fringe benefit costs would be greater under a worksharing system, especially the ones that depend on the numbers on the payroll rather than the hours worked (p.9). In addition, he noted the effects of the unemployment insurance system, which made layoffs a more attractive alternative to a reduction in hours (p. 10). Furthermore, Kosters and Hamermesh questioned both the worksharing and job-creation potential of the proposed 1979 revisions.

Job Creation

The only practical solution to high unemployment is job creation through the proper use of macro policies. In addition, training programs, both on-the-job and institutional, can go a long way toward

Table 4
SUMMARY OF RESPONSES TO QUESTIONNAIRE

Question 1: Why has your state's legislation gone beyond/not gone beyond the overtime and hours-of-work rules in the federal government's Fair Labor Standards Act?	
Arkansas	-
Georgia	federal FLSA sufficiently restrictive
Indiana	to protect small business
Iowa	-
Kentucky	-
Maine	to keep laws comparable to federal government and other states
Maryland	-
Minnesota	-
Nebraska	agricultural state
Nevada	-
New Hampshire	-
New Jersey	same as federal -- to reduce administrative burdens
New Mexico	-
Rhode Island	to protect employees of small business
South Carolina	no perceived local need
Vermont	-
Washington	-
Wisconsin	-
Wyoming	-

- denotes no meaningful response.

Table 4a

Question 2: **Would a mandatory shorter workweek and/or higher overtime pay premium (a) lead to an increase in the number of jobs in your state? and (b) affect your state's ability to attract new investment?**

	(a)	(b)
Arkansas	not likely	not likely
Georgia	not likely	probably
Indiana	not likely	not likely
Iowa	-	probably
Kentucky	yes	no
Maine	slight increase	not likely
Maryland	-	probably
Minnesota	slight increase	not likely
Nebraska	-	-
Nevada	yes	no
New Hampshire	-	-
New Jersey	no	yes
New Mexico	yes	probably
Rhode Island	not likely	probably
South Carolina	-	-
Vermont	-	-
Washington	-	-
Wisconsin	-	-
Wyoming	-	-

- denotes no meaningful response.

table 4b

Question 3: **How prevalent is the persistent use of overtime in your state?**

Arkansas	-
Georgia	-
Indiana	prevalent in manufacturing; rare in services
Iowa	prevalent
Kentucky	limited
Maine	prevalent in seasonal employment
Maryland	-
Minnesota	common in cyclical and seasonal industries
Nebraska	-
Nevada	-
New Hampshire	prevalent
New Jersey	limited
New Mexico	prevalent
Rhode Island	common in exempt areas
South Carolina	-
Vermont	-
Washington	common
Wisconsin	paper industry on 6-day workweek
Wyoming	-

- denotes no meaningful response.

table 4c

Question 4: Why do companies opt for overtime?	
Arkansas	hiring and training costs
Georgia	cost effectiveness
Indiana	cost effectiveness
Iowa	-
Kentucky	fringe benefits and government - required payments
Maine	training costs; less paperwork; lower tax burden
Maryland	skilled worker shortage
Minnesota	training costs; productivity gap, experienced and nonexperienced workers
Nebraska	fringe benefits
Nevada	-
New Hampshire	shortage of workers
New Jersey	shortage of workers; seasonality of production
New Mexico	training costs; fringe benefits
Rhode Island	-
South Carolina	training costs
Vermont	-
Washington	-
Wisconsin	fringe benefits
Wyoming	-

- denotes no meaningful responses.

table 4d

Question 5: Is compensatory time-off, at a premium rate, in lieu of overtime pay a feasible option?

Arkansas	useful for state employees
Georgia	useful for state employees
Indiana	limited feasibility
Iowa	-
Kentucky	no
Maine	no; defeats purpose of cash payments as deterrent
Maryland	no; scheduling problems
Minnesota	-
Nebraska	feasible
Nevada	feasible
New Hampshire	-
New Jersey	feasible
New Mexico	perhaps
Rhode Island	cash payments a deterrent to overtime
South Carolina	useful for state employees
Vermont	perhaps
Washington	feasible if requested by employees
Wisconsin	no
Wyoming	varies from industry to industry

- denotes no meaningful responses.

table 4e

Question 6: **Is your state considering any changes in the legislation dealing with hours of work and overtime?**

Arkansas	no
Georgia	no
Indiana	no
Iowa	no
Kentucky	no
Maine	no
Maryland	no
Minnesota	no
Nebraska	no
Nevada	minor revisions
New Hampshire	just changed law
New Jersey	no
New Mexico	no
Rhode Island	no; enforcement burden costly, adverse effect on business climate, no demand by employee groups
South Carolina	no; no local demand
Vermont	no
WAshington	no
Wisconsin	no; no public demand
Wyoming	yes -- include males in legislation

resolving structural unemployment problems and removing two of the reasons for employers using overtime:

o lack of skilled workers and the high costs of training.

CONCLUDING COMMENTS

There are several important lessons that can be learned from the U.S. experience and the comments of state government officials. Obviously, some of the lessons cannot be directly transferred to the Ontario setting. Nevertheless, even these are useful for the insights they may provide into certain problems or the feasibility of certain policy options. among the more valuable of the lessons are the following:

1. There does not appear to be any single appropriate standard for the workweek. There are taste differences among workers. Companies use different production techniques and differ as well in their sensitivity to seasonal, cyclical and random product demand and labour supply variations.

2. The costs of hiring workers, including expected termination costs, appear to be the principal factor influencing the job creation potential of reducing overtime. The availability of skilled workers could help reduce training costs. The willingness of new hires to accept lower fringe benefits and/or starting wages (the acceptance of a two-tier wage system by new employees) could also reduce hiring costs. The availability of a temporary labour market supplying

workers with the proper skills might also assist in augmenting the limited job creation potential of reducing overtime.

3. Mandating the use of less overtime may increase costs for employers. But it is conceivable that because of poor information or unwillingness to experiment, companies may not be minimizing their costs under the present rules. Thus, if employers were compelled to scale back their use of overtime, they might begin to search for new production techniques or new internal labour market arrangements which might be more cost efficient than the use of overtime.

4. Comp time, especially the comp bank idea (some or all of the cash payments for overtime are put into a trust to finance leaves of absence) might lead to the preservation of jobs during slack economic periods.

5. With the exception of divorced, separated or widowed women, workers in the U.S. do not appear to be dependent on overtime pay to maintain an acceptable standard of living. The small business sector in general is a low wage sector according to the U.S. statistics, and overtime pay premiums are the exception not the rule in this sector of the economy.

6. Quid pro quo conditions should be attached to permits. For example, when overtime is used for peak-production problems. For example, when overtime is used for peak-production problems, permits should be granted only if employers commit themselves to using temporary-help markets where available, or in their absence,

employers should promise to contribute in some way to the development of such markets. When overtime is used because of the lack of skilled workers, employers should institute training programs. Finally, as a general rule, companies receiving permits should contribute the difference between the time-and-one-half rate paid to employees and a double time rate to a special insurance fund as described above.

One last lesson worth noting is that the states have tried not to differentiate their hours of work and overtime laws from the FLSA and those of other nearby states. With the possible exception of California, no state has wanted to be an innovator in this area, preferring instead to let the federal government or the market take the lead. For this reason, there does not appear to be any interest at the state level to change the hours of work and overtime laws and especially to tighten up the rules.

Appendix A:

Summary of Major Provisions Regarding Overtime in U.S. Fair Labor Standards Act, as Amended, July 1986

Basic Standard

- overtime pay at a rate of not less than 1.5 times the regular rates of pay after 40 hours a week;
- hospitals and residential care establishments may adopt, by agreement with employees, a 14-day overtime period in lieu of a 7-day workweek, if the employees are paid at least 1.5 times their regular rates for hours worked in excess of 8 per day or 80 in a 14-day work period, whichever is the greater number of overtime hours;
- the maximum work-hours standard for fire protection employees is 212 hours for a work period of 28 consecutive days and the maximum work hours standard for law enforcement employees (including security personnel in correctional institutions) is 171 hours for a work period of 28 consecutive days.

Coverage

- all employees of enterprises engaged in interstate commerce; the production of goods for interstate commerce; or the handling, sales or other work on goods or materials that have been moved in or produced for interstate commerce;

- all employees of enterprises
  - engaged in laundering or cleaning of clothing or fabrics; or
  - engaged in construction or reconstruction; or
  - engaged in the operation of a hospital; an institution primarily engaged in the care of the sick, aged, or mentally ill who reside on the premises; a school for mentally or physically handicapped or gifted children; a pre-school, an elementary or secondary school; or an institute of higher education (regardless of whether or not any of the above institutions are public or private, profit or nonprofit); or
  - comprised exclusively of one or more retail or selected service establishments with annual gross volume of sales of $362,500 (excluding excise taxes at the retail level); or
  - engaged in any other type of business with annual gross volume of sales of $250,000 (excluding excise taxes at the retail level);
- all federal government employees;
- all employees of state and local governments;
- communication and transportation workers engaged in interstate commerce;
- employees handling, shipping, or receiving goods moving in interstate commerce;
- clerical or other workers who regularly use the mails, telephone, or telegraph for interstate communications or who keep records on interstate transactions;

- employees who regularly cross state lines in the course of their work;
- employees of independent employers who perform clerical, custodial, maintenance, or other work for other firms engaged in interstate commerce or the production of goods for interstate commerce;
- domestic service workers (maids, day workers, housekeepers, chauffeurs, cooks, full-time babysitters) who receive at least $50 in cash wages every three months from their employers or work more than 8 hours a week for one or more employers.

Exemptions From Overtime Pay Premium

- executive, administrative, and professional employees (includes teachers and academic administrative personnel in elementary or secondary schools);
- outside salespersons;
- employees of certain individually owned and operated small retail or service establishments not part of a covered enterprise;
- employees of certain seasonal amusement or recreational establishments;
- employees of certain small newspapers;
- switchboard operators of small telephone companies;
- seamen employed on foreign vessels;
- employees engaged in fishing operations;
- casual babysitters and persons employed as companions for the elderly or infirm;

- certain highly paid commission employees of retail or service establishments;
- auto, truck, trailer, farm implement, boat, or aircraft salesworkers; or partsmen and mechanics servicing autos, trucks, or farm implements, and who are employed by nonmanufacturing establishments primarily engaged in selling these items to ultimate purchasers;
- employees of railroads and air carriers, taxi drivers, certain employees of motor carriers, seamen on American vessels, and local delivery employees;
- announcers, news editors, and chief engineers of certain nonmetropolitan broadcasting stations;
- domestic service workers residing in the employers' residences;
- employees of motion picture theaters;
- farmworkers.

Workweek

- a period of 168 hours during 7 consecutive 24-hour periods, that can begin on any day of the week and any hour of the day established by the employer;
- each workweek stands alone so no averaging of two or more workweeks unless exemptions provided.

Enforcement

- the Wage and Hour Division of the U.S. Department of Labor administers and enforces the law with respect to private employment, state and local government employment, and federal

employees of the Library of Congress, U.S. postal service, and the Tennessee Valley Authority;

- Office of Personnel Management responsible for enforcement for all other federal government employees;
- compliance officers stationed across the U.S. have authority to conduct investigations and gather data on wages and hours in order to determine compliance with the Act;
- willful violations can be prosecuted criminally and the violator fined up to $10,000; a second conviction may result in imprisonment.

Recovery of Back Wages

- Division can supervise payment of back wages;
- Secretary of Labor can bring suit for back wages and an equal amount as liquidated damages;
- employees can file private suit for back pay and an equal amount as liquidated damages, plus attorney's fees and court costs;
- Secretary of Labor can obtain injunction to restrain any person from violating the law;
- two-year statute of limitations on recovery of back wages; three years in cases of willful violation.

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